

HB3880



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3880

Introduced 2/26/2009, by Rep. Shane Cultra

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7

Amends the County School Facility Occupation Tax Law in the Counties Code. Provides that the amount to be distributed to each regional superintendent of schools is the amount collected from all counties prorated to each county based on the average daily attendance of pupils resident in the county.

LRB096 11588 RLJ 22076 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 5-1006.7 as follows:

6 (55 ILCS 5/5-1006.7)

7 Sec. 5-1006.7. School facility occupation taxes.

8 (a) The county board of any county may impose a tax upon
9 all persons engaged in the business of selling tangible
10 personal property, other than personal property titled or
11 registered with an agency of this State's government, at retail
12 in the county on the gross receipts from the sales made in the
13 course of business to provide revenue to be used exclusively
14 for school facility purposes if a proposition for the tax has
15 been submitted to the electors of that county and approved by a
16 majority of those voting on the question as provided in
17 subsection (c). The tax under this Section may be imposed only
18 in one-quarter percent increments and may not exceed 1%.

19 This additional tax may not be imposed on the sale of food
20 for human consumption that is to be consumed off the premises
21 where it is sold (other than alcoholic beverages, soft drinks,
22 and food that has been prepared for immediate consumption) and
23 prescription and non-prescription medicines, drugs, medical

1 appliances and insulin, urine testing materials, syringes and
2 needles used by diabetics. The Department of Revenue has full
3 power to administer and enforce this subsection, to collect all
4 taxes and penalties due under this subsection, to dispose of
5 taxes and penalties so collected in the manner provided in this
6 subsection, and to determine all rights to credit memoranda
7 arising on account of the erroneous payment of a tax or penalty
8 under this subsection. The Department shall deposit all taxes
9 and penalties collected under this subsection into a special
10 fund created for that purpose.

11 In the administration of and compliance with this
12 subsection, the Department and persons who are subject to this
13 subsection (i) have the same rights, remedies, privileges,
14 immunities, powers, and duties, (ii) are subject to the same
15 conditions, restrictions, limitations, penalties, and
16 definitions of terms, and (iii) shall employ the same modes of
17 procedure as are set forth in Sections 1 through 10, 2 through
18 2-70 (in respect to all provisions contained in those Sections
19 other than the State rate of tax), 2a through 2h, 3 (except as
20 to the disposition of taxes and penalties collected), 4, 5, 5a,
21 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8,
22 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act
23 and all provisions of the Uniform Penalty and Interest Act as
24 if those provisions were set forth in this subsection.

25 The certificate of registration that is issued by the
26 Department to a retailer under the Retailers' Occupation Tax

1 Act permits the retailer to engage in a business that is
2 taxable without registering separately with the Department
3 under an ordinance or resolution under this subsection.

4 Persons subject to any tax imposed under the authority
5 granted in this subsection may reimburse themselves for their
6 seller's tax liability by separately stating that tax as an
7 additional charge, which may be stated in combination, in a
8 single amount, with State tax that sellers are required to
9 collect under the Use Tax Act, pursuant to any bracketed
10 schedules set forth by the Department.

11 (b) If a tax has been imposed under subsection (a), then a
12 service occupation tax must also be imposed at the same rate
13 upon all persons engaged, in the county, in the business of
14 making sales of service, who, as an incident to making those
15 sales of service, transfer tangible personal property within
16 the county as an incident to a sale of service.

17 This tax may not be imposed on sales of food for human
18 consumption that is to be consumed off the premises where it is
19 sold (other than alcoholic beverages, soft drinks, and food
20 prepared for immediate consumption) and prescription and
21 non-prescription medicines, drugs, medical appliances and
22 insulin, urine testing materials, syringes, and needles used by
23 diabetics.

24 The tax imposed under this subsection and all civil
25 penalties that may be assessed as an incident thereof shall be
26 collected and enforced by the Department and deposited into a

1 special fund created for that purpose. The Department has full
2 power to administer and enforce this subsection, to collect all
3 taxes and penalties due under this subsection, to dispose of
4 taxes and penalties so collected in the manner provided in this
5 subsection, and to determine all rights to credit memoranda
6 arising on account of the erroneous payment of a tax or penalty
7 under this subsection.

8 In the administration of and compliance with this
9 subsection, the Department and persons who are subject to this
10 subsection shall (i) have the same rights, remedies,
11 privileges, immunities, powers and duties, (ii) be subject to
12 the same conditions, restrictions, limitations, penalties and
13 definition of terms, and (iii) employ the same modes of
14 procedure as are set forth in Sections 2 (except that that
15 reference to State in the definition of supplier maintaining a
16 place of business in this State means the county), 2a through
17 2d, 3 through 3-50 (in respect to all provisions contained in
18 those Sections other than the State rate of tax), 4 (except
19 that the reference to the State shall be to the county), 5, 7,
20 8 (except that the jurisdiction to which the tax is a debt to
21 the extent indicated in that Section 8 is the county), 9
22 (except as to the disposition of taxes and penalties
23 collected), 10, 11, 12 (except the reference therein to Section
24 2b of the Retailers' Occupation Tax Act), 13 (except that any
25 reference to the State means the county), Section 15, 16, 17,
26 18, 19, and 20 of the Service Occupation Tax Act and all

1 provisions of the Uniform Penalty and Interest Act, as fully as
2 if those provisions were set forth herein.

3 Persons subject to any tax imposed under the authority
4 granted in this subsection may reimburse themselves for their
5 serviceman's tax liability by separately stating the tax as an
6 additional charge, which may be stated in combination, in a
7 single amount, with State tax that servicemen are authorized to
8 collect under the Service Use Tax Act, pursuant to any
9 bracketed schedules set forth by the Department.

10 (c) The tax under this Section may not be imposed until, by
11 ordinance or resolution of the county board, the question of
12 imposing the tax has been submitted to the electors of the
13 county at a regular election and approved by a majority of the
14 electors voting on the question. Upon a resolution by the
15 county board or a resolution by school district boards that
16 represent at least 51% of the student enrollment within the
17 county, the county board must certify the question to the
18 proper election authority in accordance with the Election Code.

19 The election authority must submit the question in
20 substantially the following form:

21 Shall (name of county) be authorized to impose a
22 retailers' occupation tax and a service occupation tax
23 (commonly referred to as a "sales tax") at a rate of
24 (insert rate) to be used exclusively for school facility
25 purposes?

26 The election authority must record the votes as "Yes" or "No".

1 If a majority of the electors voting on the question vote
2 in the affirmative, then the county may, thereafter, impose the
3 tax.

4 For the purposes of this subsection (c), "enrollment" means
5 the head count of the students residing in the county on the
6 last school day of September of each year, which must be
7 reported on the Illinois State Board of Education Public School
8 Fall Enrollment/Housing Report.

9 (d) The Department shall immediately pay over to the State
10 Treasurer, ex officio, as trustee, all taxes and penalties
11 collected under this Section to be deposited into the School
12 Facility Occupation Tax Fund, which shall be an unappropriated
13 trust fund held outside the State treasury.

14 On or before the 25th day of each calendar month, the
15 Department shall prepare and certify to the Comptroller the
16 disbursement of stated sums of money to the regional
17 superintendents of schools in counties from which retailers or
18 servicemen have paid taxes or penalties to the Department
19 during the second preceding calendar month. The amount to be
20 paid to each regional superintendent of schools and disbursed
21 to him or her in accordance with 3-14.31 of the School Code, is
22 equal to the amount (not including credit memoranda) collected
23 from all counties ~~the county~~ under this Section during the
24 second preceding calendar month by the Department prorated to
25 each county based on the average daily attendance of pupils
26 resident in the county, (i) less 2% of that amount, which shall

1 be deposited into the Tax Compliance and Administration Fund
2 and shall be used by the Department, subject to appropriation,
3 to cover the costs of the Department in administering and
4 enforcing the provisions of this Section, on behalf of the
5 county, (ii) plus an amount that the Department determines is
6 necessary to offset any amounts that were erroneously paid to a
7 different taxing body; (iii) less an amount equal to the amount
8 of refunds made during the second preceding calendar month by
9 the Department on behalf of the county; and (iv) less any
10 amount that the Department determines is necessary to offset
11 any amounts that were payable to a different taxing body but
12 were erroneously paid to the county. When certifying the amount
13 of a monthly disbursement to a regional superintendent of
14 schools under this Section, the Department shall increase or
15 decrease the amounts by an amount necessary to offset any
16 miscalculation of previous disbursements within the previous 6
17 months from the time a miscalculation is discovered.

18 Within 10 days after receipt by the Comptroller from the
19 Department of the disbursement certification to the regional
20 superintendents of the schools provided for in this Section,
21 the Comptroller shall cause the orders to be drawn for the
22 respective amounts in accordance with directions contained in
23 the certification.

24 If the Department determines that a refund should be made
25 under this Section to a claimant instead of issuing a credit
26 memorandum, then the Department shall notify the Comptroller,

1 who shall cause the order to be drawn for the amount specified
2 and to the person named in the notification from the
3 Department. The refund shall be paid by the Treasurer out of
4 the School Facility Occupation Tax Fund.

5 (e) For the purposes of determining the local governmental
6 unit whose tax is applicable, a retail sale by a producer of
7 coal or another mineral mined in Illinois is a sale at retail
8 at the place where the coal or other mineral mined in Illinois
9 is extracted from the earth. This subsection does not apply to
10 coal or another mineral when it is delivered or shipped by the
11 seller to the purchaser at a point outside Illinois so that the
12 sale is exempt under the United States Constitution as a sale
13 in interstate or foreign commerce.

14 (f) Nothing in this Section may be construed to authorize a
15 county board to impose a tax upon the privilege of engaging in
16 any business that under the Constitution of the United States
17 may not be made the subject of taxation by this State.

18 (g) If a county board imposes a tax under this Section,
19 then the board may, by ordinance, discontinue or reduce the
20 rate of the tax. If, however, a school board issues bonds that
21 are backed by the proceeds of the tax under this Section, then
22 the county board may not reduce the tax rate or discontinue the
23 tax if that rate reduction or discontinuance would inhibit the
24 school board's ability to pay the principal and interest on
25 those bonds as they become due. If the county board reduces the
26 tax rate or discontinues the tax, then a referendum must be

1 held in accordance with subsection (c) of this Section in order
2 to increase the rate of the tax or to reimpose the discontinued
3 tax.

4 The results of any election that authorizes a proposition
5 to impose a tax under this Section or to change the rate of the
6 tax along with an ordinance imposing the tax, or any ordinance
7 that lowers the rate or discontinues the tax, must be certified
8 by the county clerk and filed with the Illinois Department of
9 Revenue either (i) on or before the first day of April,
10 whereupon the Department shall proceed to administer and
11 enforce the tax or change in the rate as of the first day of
12 July next following the filing; or (ii) on or before the first
13 day of October, whereupon the Department shall proceed to
14 administer and enforce the tax or change in the rate as of the
15 first day of January next following the filing.

16 (h) For purposes of this Section, "school facility
17 purposes" means the acquisition, development, construction,
18 reconstruction, rehabilitation, improvement, financing,
19 architectural planning, and installation of capital facilities
20 consisting of buildings, structures, and durable equipment and
21 for the acquisition and improvement of real property and
22 interest in real property required, or expected to be required,
23 in connection with the capital facilities. "School-facility
24 purposes" also includes fire prevention, safety, energy
25 conservation, disabled accessibility, school security, and
26 specified repair purposes set forth under Section 17-2.11 of

1 the School Code.

2 (i) This Section does not apply to Cook County.

3 (j) This Section may be cited as the County School Facility
4 Occupation Tax Law.

5 (Source: P.A. 95-675, eff. 10-11-07.)